

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ANTHONY CHARLES RENN,

No. C 11-3471 SI (pr)

Petitioner,

**ORDER ON INITIAL REVIEW**

v.

R. GROUNDS, warden,

Respondent.

**INTRODUCTION**

Anthony Charles Renn, an inmate at the prison in Soledad, California, filed this pro se action seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2254. His petition is now before the court for review pursuant to 28 U.S.C. §2243 and Rule 4 of the Rules Governing Section 2254 Cases.

**BACKGROUND**

Renn states in his petition that he was convicted in the Marin County Superior Court of two counts of auto burglary and three counts of possession of stolen property. He was sentenced on October 26, 1996 to 25 years to life in prison. He appealed. The California Court of Appeal affirmed his conviction on March 28, 1997, and the California Supreme Court denied his petition for review on an unstated date. He also reports that he filed habeas petitions in state court before filing this action.

Petitioner then filed this action, seeking a writ of habeas corpus. The signature date on the petition is July 4, 2011. His petition has a proof of service indicating that it was mailed by

1 a third party to the court on July 14, 2011. The petition was stamped "filed" on July 14, 2011.

## 2 3 **DISCUSSION**

4 This court may entertain a petition for writ of habeas corpus "in behalf of a person in  
5 custody pursuant to the judgment of a State court only on the ground that he is in custody in  
6 violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a); *Rose*  
7 *v. Hodges*, 423 U.S. 19, 21 (1975). A district court shall "award the writ or issue an order  
8 directing the respondent to show cause why the writ should not be granted, unless it appears  
9 from the application that the applicant or person detained is not entitled thereto." 28 U.S.C. §  
10 2243. Under Rule 4 of the Rules Governing Section 2254 Cases In The United States District  
11 Courts, a district court may also order the respondent to file another pleading where neither  
12 summary dismissal nor service is appropriate.

13 The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), which became  
14 law on April 24, 1996, imposed for the first time a statute of limitations on petitions for a writ  
15 of habeas corpus filed by state prisoners. Petitions filed by prisoners challenging non-capital  
16 state convictions or sentences must be filed within one year of the latest of the date on which:  
17 (1) the judgment became final after the conclusion of direct review or the time passed for  
18 seeking direct review; (2) an impediment to filing an application created by unconstitutional  
19 state action was removed, if such action prevented petitioner from filing; (3) the constitutional  
20 right asserted was recognized by the Supreme Court, if the right was newly recognized by the  
21 Supreme Court and made retroactive to cases on collateral review; or (4) the factual predicate  
22 of the claim could have been discovered through the exercise of due diligence. *See* 28 U.S.C.  
23 § 2244(d)(1). Time during which a properly filed application for state post-conviction or other  
24 collateral review is pending is excluded from the one-year time limit. 28 U.S.C. § 2244(d)(2).

25 The petition in this action was filed more than a year after petitioner's conviction became  
26 final, and may be untimely under the AEDPA's one-year limitation period. This apparent  
27 procedural problem should be addressed before the court reaches the merits of the claims raised  
28

1 in the petition. If the petition is time-barred, the litigants and court need not expend resources  
2 addressing the claims in the petition. Accordingly, pursuant to Rule 4 of the Rules Governing  
3 Section 2254 Cases In The United States District Courts, respondent must either (1) move to  
4 dismiss the petition on the ground that it is untimely, or (2) inform the court that respondent is  
5 of the opinion that a motion to dismiss is unwarranted in this case.

6  
7 **CONCLUSION**

8 Good cause appearing therefor,

9 1. The clerk shall serve by certified mail a copy of this order and the petition upon  
10 respondent and respondent's attorney, the Attorney General of the State of California. The clerk  
11 shall also serve a copy of this order on petitioner.

12 2. Respondent must file with the court and serve upon petitioner, on or before  
13 **September 30, 2011**, a motion to dismiss the petition or a notice that respondent is of the  
14 opinion that a motion to dismiss is unwarranted.


15 3. If petitioner wishes to oppose the motion to dismiss, he must do so by filing an  
16 opposition with the court and serving it upon respondent on or before **November 4, 2011**.

17 4. Respondent must file and serve any reply on or before **November 18, 2011**.

18 5. The motion will be deemed submitted as of the date the reply brief is due. No  
19 hearing will be held on the motion. If respondent notifies the court that a motion to dismiss is  
20 unwarranted or the motion to dismiss is decided against respondent, the court will then  
21 determine whether to require an answer to the petition.

22 **IT IS SO ORDERED.**

23 DATED: July 26, 2011

24   
25 **SUSAN ILLSTON**  
26 United States District Judge  
27  
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